

the Supreme Court's reasoning is very persuasive: and would draw attention, as the learned Chief Justice did, to a comment of Ritchie J. at p. 178, where he treated "*The Colorado*" as authority for the contention

"that where a right in the nature of a maritime lien exists under a foreign law which is the proper law of the contract, the English Courts will recognise it and will accord it the priority which a right of that nature would be given under English procedure."

In our opinion the English Court of Appeal in "*The Colorado*" adopted the approach which is correct in principle. A maritime lien is a right of property given by way of security for a maritime claim. If the Admiralty court has, as in the present case, jurisdiction to entertain the claim, it will not disregard the lien. A maritime lien validly conferred by the *lex loci* is as much part of the claim as is a mortgage similarly valid by the *lex loci*. Each is a limited right of property securing the claim. The lien travels with the claim, as does the mortgage: and the claim travels with the ship. It would be a denial of history and principle, in the present chaos of the law of the sea governing the recognition and priority of maritime liens and mortgages, to refuse the aid of private international law.

For these reasons, we think that the Court of Appeal reached the correct conclusion and would dismiss the appeal.

Appeal allowed.

Solicitors: *Linklaters & Paines; Thomas Cooper & Stibbard.*

A SINGAPORE REPORTS

HARRY LEE WEE v. HAW PAR BROTHERS INTERNATIONAL LTD.

[C.A. (Kulasekaram, Chua & Rajah JJ.) August 1, 1980]
[Singapore — Civil Appeal No. 47 of 1979]

B *Practice and Procedure — Costs — Lump sum bill not itemised — Order for taxation — Inherent jurisdiction of court — Appeal against order.*

The present appeal arose out of the lower court's decision ordering the defendant's bill of costs to be taxed (see [1980] 2 M.L.J. 8). The facts were briefly as follows. The plaintiff company retained the defendant's firm as solicitors for the plaintiff company and its subsidiaries from November 1975 to August 1976. During that period the plaintiff paid \$119,500 to account of costs, excluding disbursements. The defendant had submitted 27 bills which amounted to \$610,000 exclusive of disbursements. Apart from the payment of the said \$119,500, the plaintiff made no further payments on the said bills as it was of the view that the amounts charged were grossly excessive.

D *Held*, dismissing the appeal: (1) if a solicitor is engaged by a client in his capacity as solicitor then all his bills, whether for legal or non-legal work, are subject to taxation under the Legal Profession Act (Cap. 217);

(2) the quantum and the size of the main bill (No. 67/77) with its detailed itemization and narration of the work done without any sum being shown against each such item but a final lump sum figure shown to represent the costs of all the items were in themselves special circumstances for the exercise of the court's discretion in this case;

E (3) in the instant case there had been prolonged negotiations between the parties and it was only when such negotiations had broken down that proceedings were commenced by the defendant. This, in itself, was a special circumstance which would have justified the court in exercising its discretion to order taxation.

Cases referred to:-

- F** (1) *Allen v. Jarvis* (1869) L.R. 4 Ch. A. 616.
(2) *Allen v. Aldridge* 49 E.R. 633.
(3) *In re Jones* (1871) L.R. 13 Eq. 336.
(4) *In re Baker, Lees & Co.* [1903] 1 K.B. 189.
(5) *In re Robinson* (1867) 3 Ex. 4.
(6) *In re A Solicitor* [1961] Ch. 491.
(7) *In re Norman* (1886) 16 Q.B.D. 673.
(8) *In re Cheeseman* [1891] 2 Ch. 289.

G CIVIL APPEAL.

Y.R. Jumabhoy for the appellant.

L.P. Thean for the respondents.

Cur. Adv. Vult.

H *Rajah J.* (delivering the judgment of the Court): The plaintiff company retained the defendant and his firm of solicitors of Messrs. Braddell Brothers, to act as solicitor for the plaintiff and its subsidiaries on various matters from early November 1975 to August 31, 1976, when the defendant's services were terminated.

I The defendant was to be paid a retaining fee of \$1,500 per month from January to September 1976; this payment was however in addition to the fees payable to the defendant for work done by him for the plaintiff and/or its subsidiaries.

In August and September 1976 the defendant delivered to the plaintiff two lump sum bills of costs, brief particulars of which are as follows:

Date	Bill No.	Matter	Amount
30.8.76	152/76	Loan of US\$7.5 million	\$18,223.50
3.9.76	172/76	DBS Debenture	\$11,651.78
			<u>\$29,875.28</u>

On March 30, 1977 the defendant delivered to the plaintiff further 24 lump sum bills of costs, all bearing the same date, for a total sum of \$447,761 in respect of other work done, brief particulars of which are as follows:—

Bill No.	Matter	Amount
67/77	Haw Par/Slater Walker Dispute Less paid	\$501,011.00 119,500.00
		<u>381,511.00</u>
68/77	Notarial Services	250.00
69/77	Pharmaceutical Division	1,400.00
70/77	Investigation of Air Tickets	750.00
71/77	Claim of Kuwait	200.00
72/77	Harry Crabb's Letter of Appointment	50.00
73/77	Appointment of Mr. Fam as Director of HPIF N.V.	150.00
74/77	Perusing and Advising on Resolution granting Mr. Fam Power of Attorney	200.00
75/77	Advising on Contract of Service of Managing Director and Central Provident Fund related thereto	600.00
76/77	Mr. Magnus	2,000.00
77/77	Perusing and advising on Resolution of HPHK	200.00
78/77	Notices on Meeting and Proxy Forms	150.00
79/77	Law Note on Resolution of HPBIL to borrow US\$7½ million loan and Disclosures of Directors' Interest	400.00
80/77	Advice on Ratifying Resolution re Amendment of Nominal Value of Convertible Preference Shares	400.00
81/77	Advice on Annual Report	450.00
82/77	Advice on Directors' Remuneration disclosed in Directors' Report	150.00
83/77	Charter Consolidated (M) Sdn. Bhd. and Central Mining Finance	150.00
84/77	Second Supplemental Deed Between Athea & Central Mining Finance	750.00
85/77	M & G General Bill	5,000.00
86/77	M & G Gearing & Staffing requirements	500.00
87/77	Lockhart Road Building	2,500.00
88/77	Financing	7,500.00
89/77	London Tin & Reconstruction of Haw Par London Ltd	35,000.00
90/77	Miscellaneous Matters	7,500.00
	Total Amount	<u>\$447,761.00</u>

The plaintiff had during the period November 1975 to August 1976 paid the defendant sums totalling \$119,500 for which sum the defendant gave the plaintiff credit in the aforesaid Bill No. 67/77. As a matter of arithmetic the 27 bills submitted to the plaintiff totalled in all to a sum of a little over \$610,000 exclusive of disbursements. Apart from the payment of the said \$119,500 the plaintiff made no further payments on the said bills as it was of the view that the amounts charged were grossly excessive.

Negotiations then ensued between the plaintiff and the defendant with a view to reaching agreement

A on the balance of profit costs claimed by the defendant. But unfortunately no such agreement was reached. The defendant thereupon started proceedings against the plaintiff in Suit No. 3731 of 1978 wherein he claimed payment of the sum of \$477,636.28.

The plaintiff, for its part, then took out an originating summons against the defendant praying for:—

B (a) An Order that the defendant do within 30 days after service of this Order deliver to the plaintiff bills of costs in all matters of business specified or referred to in the second column of the Schedule hereto attached and that such bills as and when delivered be referred to the Registrar to be taxed and settled and that the defendant do give credit for all sums of money received by him from or on account of the plaintiff and refund what (if anything) he may on such taxation appear to have been overpaid.

C (b) In the alternative, an Order that the bills of costs delivered to the plaintiff by the defendant, particulars whereof are set out in the said Schedule hereto attached, be referred to the Registrar to be taxed and that the defendant do give credit for all sums of money received by him from or on account of the plaintiff and refund what (if anything) he may on such taxation appear to have been overpaid.

D (c) An Order that the Registrar do tax the costs of the reference and certify what shall be found due to or from either party in respect of the said bills and of the costs of the reference, to be charged (if payable) according to the event of the taxation, pursuant to the Legal Profession Act (Cap. 217).

E (d) An Order that pending delivery of the bills of costs and taxation of costs under paragraph 1 above, or taxation of the said bills of costs under paragraph 2 above, the defendant do not prosecute the action in Suit No. 3731 of 1978 or commence any other action for recovery of any costs.

(e) Further and other reliefs.

G (f) Costs.

The summons came on for hearing before the learned Chief Justice in chambers where after hearing counsel on both sides he made no order on Prayer (a), made orders in terms on Prayers (b), (c) and (d) and gave the parties liberty to apply.

H Against these orders the defendant appealed and at the hearing his counsel contended:—

(a) that as the plaintiff's application was by way of originating summons in a contested matter it was bad in law, there being a multiplicity of proceedings;

I (b) that a substantial amount of the fees charged was for personal services of a non legal nature and that there is no provision for taxation of such services under the Legal Profession Act (Cap. 217);

(c) that by virtue of sections 120 and 122 of the Legal Profession Act as was applicable at the material times (but since amended by the Legal Profession

(Amendment) Act, 1979) the plaintiff was barred from obtaining any order for taxation;

- (d) that in any event there were no special circumstances justifying the court to exercise its inherent jurisdiction to order a taxation;
- (e) that the fees charged were not excessive in all the circumstances of the case;
- (f) that the exercise of the discretion to order taxation had not been exercised on judicial grounds;
- (g) that the only exercise of such discretion should have been in the form of an Order as was made in *Allen v. Jarvis*.⁽¹⁾

Ground (a): The question of multiplicity of proceedings was not seriously argued before the learned Chief Justice nor was it before us. We were of the view that there was no substance in this submission, particularly as the suit started by the defendant for payment of his bills had been stayed by the learned Chief Justice and the carrying out of his orders would have enabled the defendant's claim in his suit to have been summarily resolved by a person well fitted and equipped to do so, namely, the Registrar.

Ground (b): We saw no merit at all in this proposition. We are of the view that if a solicitor is engaged by a client in his capacity as solicitor then all his bills, whether for legal or non-legal work, are subject to taxation under the Legal Profession Act (Cap. 217). Our view is amply borne out by a reading of *Allen v. Aldridge*,⁽²⁾ *In re Jones*⁽³⁾ and *In re Baker*.⁽⁴⁾ We are further fortified in our view by the provisions of Schedule VI of the Solicitors' Remuneration Order 1974.

Ground (c): On the question of whether the plaintiff is barred from obtaining any order for taxation under sections 120 and 122 of the Legal Profession Act, the learned Chief Justice did not proceed under these sections when he made his order for taxation. He was relying on the inherent jurisdiction of the court to exercise control over its officers and this was never in dispute before the learned Chief Justice. On this aspect of the matter his judgment says, "It was not in dispute that the court, in the exercise of its general or original or inherent jurisdiction over its officers, may order taxation where its statutory jurisdiction is inapplicable." There is therefore no need for us to say anything more on this ground.

Grounds (d), (e) & (f): can be dealt with together. We did not agree that there are no special circumstances justifying the learned Chief Justice to exercise his discretion to order taxation. To begin with the quantum and the size of the main Bill No. 67/77 with its detailed itemisation and narration of the work done without any sum being shown against each such item but a final lump sum figure shown to represent the costs of all the items are in themselves, in our view, special circumstances for the exercise of the court's discretion here. We are sustained in our view by *In re Robinson*,⁽⁵⁾ *In re Solicitor*⁽⁶⁾ and *In re Norman*.⁽⁷⁾

Further, in the instant case there had been prolonged negotiations between the parties and it was only when such negotiations had broken down that

A proceedings were commenced by the defendant. In our view, this in itself is a special circumstance which would have justified the court in exercising its discretion to order taxation. On this it would be useful to hear the learned Chief Justice in full:—

"The facts before me which were not in dispute are as follows. From January 1976 to September 1976 the company paid to Braddell Brothers a retaining fee of \$1,500 a month and the company provided two rooms in the company's offices and a secretary for the use of the defendant and a Legal Assistant of Braddell Brothers. The defendant during a period of nine months devoted practically the whole of his time in advising the company over the problems confronting the company arising out of its disputes with associated companies. In connection with such disputes and litigation therefrom the defendant made four visits to London.

B Having regard to these facts and all the circumstances, although it is not inconceivable that the defendant might be able to justify his bill of \$500,000 for professional services rendered in respect of the 'Haw Par/Slater Walker Dispute' if it were taxed, I considered that the lump sum of \$500,000 for the defendant's services as set out in that bill is, to use the words of Owen L.J. in *Re Boycott* (1885) 29 Ch. D. 571, 'redolent of overcharge'. Even if it is to be assumed that the defendant work everyday including Saturdays and Sundays throughout the nine month period, i.e. 270 days, that bill works out to a charge of \$1,850 per day or \$185 per hour, assuming an abnormal ten hour working day. In my judgment, purely on this test that bill ought to be taxed and I should not be surprised to see that on taxation it is substantially reduced. In the light of my view on that one bill I was satisfied that all the other bills should also be taxed."

D Further, one has also to keep in mind the law as set out in the headnote to *In re Cheeseman*⁽⁸⁾ which reads:—

E "There is no rigid rule as to what kind of circumstances will justify the taxation of a solicitor's bill after payment, but the judge has in each case to determine whether there are special circumstances which make it right to refer the bill for taxation, and if there are special circumstances in the case, the Court of Appeal will not readily interfere with the decision of the court below that they are sufficient to justify taxation."

F In the instant case, we were more than satisfied that there were special circumstances justifying the court to exercise its inherent jurisdiction to order taxation. We ourselves would not have done less.

G *Ground (g):* We were of the view that this form of order is not appropriate having regard to the facts of this case. In the *Allen v. Jarvis*⁽¹⁾ case the persons directly involved in the taxation were dead and gone whereas the persons involved in the taxation in the instant case are very much alive and with us.

H In the view we took of this case we dismissed the appeal. Counsel for the defendant made application for the costs of the appeal to be reserved pending taxation by the Registrar. We did not accede to the application and ordered that the costs of the appeal be paid by the defendant.

Appeal dismissed.

Solicitors: *Braddell Bros.; Shook Lin & Bok.*

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